

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00311

Danny McRoy,
Petitioner,

v.

Bobby Lumpkin,
Respondent.

ORDER

Petitioner Danny McRoy challenges his 2017 conviction in Wood County through this petition for the writ of habeas corpus under 28 U.S.C. § 2254. Doc. 1. This petition was referred to Magistrate Judge John D. Love. Doc. 5. On March 9, 2023, Judge Love issued a report recommending that petitioner's federal habeas petition be denied as time-barred and that the case be dismissed with prejudice. Doc. 20. Judge Love further recommended that petitioner be denied a certificate of appealability sua sponte. *Id.* Petitioner filed objections to the report and recommendation on March 27, 2023. Doc.22.

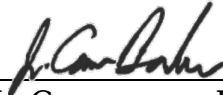
When timely objections to a magistrate judge's report and recommendation are filed, the court reviews them de novo. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). The court reviews all unobjected-to portions of the report and recommendation only for clear error or abuse of discretion. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Petitioner's objections ask that the court look to his substantive claims, as he contends the state court findings are contrary to law. Doc. 22. As Judge Love found, however, petitioner's claims are barred by the statute of limitations, as his federal petition was filed 43 days late. Doc. 20. Judge Love further explained that petitioner had not shown that he was entitled to equitable tolling. *Id.* Petitioner's objections do not address his untimely federal filing or state any basis for his entitlement to equitable tolling. His objections about the state court findings being contrary to law are thus without merit,

as the expired limitations period bars the court from considering the claims on the merits. The court agrees that petitioner is not entitled to a certificate of appealability.

Accordingly, the report and recommendation is accepted. The complaint is dismissed with prejudice as time-barred. A certificate of appealability is denied. All pending motions are denied. The clerk of court is directed to close this case.

So ordered by the court on April 5, 2023.

A handwritten signature in black ink, appearing to read "J. Campbell Barker", is written over a horizontal line.

J. CAMPBELL BARKER
United States District Judge